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Government Affairs

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Vice President and Washington Counsel

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May 27, 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Caton:

On behalf of Capital Cities/ABC, Inc., the enclosed information is submitted for filing with the Commission in P.P. Docket No. 93-21. The information contained in this letter is intended to clarify and elaborate upon information previously submitted to the Commission.

1. Summary of ABC's College Football Agreements

ABC Sports, Inc. ("ABC") has been a party to several agreements pursuant to which it has acquired rights to televise college football games during the past ten years. Attached as Exhibit 1 is a table that summarizes certain provisions of those agreements that bear upon the issues with which the Commission is presently concerned. Other ABC television arrangements are described below.

ABC televised games of the members of the College Football Association ("CFA") in 1984 pursuant to a plan that was hastily arranged when the NCAA ceased, in June 1984, acting as the bargaining agent for its member schools. The parties did not execute a written agreement covering the 1984 season. Their arrangement was generally like that embodied in ABC's 1985-86 CFA contract, with one critical difference. No telecaster other than ABC was permitted to televise games of CFA schools from 3:30 to 7:00 p.m. on Saturday afternoons, including so-called "cross-over" games between CFA members and colleges not affiliated with the CFA in which the CFA school was not the home team. Because ABC was entitled to televise only home games of CFA members, this "cross-over" provision had the effect of prohibiting any telecasts of the cross-over games. This cross-over provision was the subject of litigation in Regents of University of California v.

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ABC, Inc., 747 F.2d 511 (9th Cir. 1984). No ABC contract since 1984 has included such a cross-over provision.

ABC's current contract with the CFA runs through the 1995 college football season. That contract will not be renewed. Two of the six conferences that are presently members of the CFA have entered into agreements providing for the televising of football games of their member schools by CBS beginning in 1996.

ABC has reached agreements to televise games of members of two other conferences whose members are presently members of the CFA, the ACC and the Big Twelve from 1996 through 2000. The agreement with the ACC calls for ABC to televise 14 to 15 games each year primarily on Saturday afternoons from 3:30 to 7:00 p.m. While it prohibits telecasts by others of home games of ACC members at the same time as ABC's telecast, it does not restrict telecasts at other times. We understand that the ACC intends to provide for syndicated over-the-air telecasts of its games from 12:00 noon to 3:30 p.m. on Saturdays and that ACC games will be televised over cable on Thursday and Saturday evenings. The agreement with the Big Twelve calls for ABC to televise 18 games each year, most of them during the period from 3:30 to 7:00 p.m. on Saturday afternoons. It, too, prohibits telecasts by others of home games of members of the Big Twelve at the same time as ABC's telecasts, but it does not restrict telecasts at other times. We understand that the Big Twelve intends to provide for cable syndication of its games beginning at 12:30 p.m., on several Saturday afternoons and for telecasts over cable on Thursday and Saturday evenings.

Only one antitrust tribunal has addressed the lawfulness of any of ABC's college football agreements since 1984. In Assn of Independent T.V. v. College Football Assn, 637 F. Supp. 1289 (WD Okl. 1986), the same district court judge that had decided the NCAA v. Board of Regents case rejected a challenge to ABC's 1985-86 agreement with the CFA. The court showed substantial skepticism about plaintiffs' claims and denied plaintiffs' motion for partial summary judgment because of, among other things, the significant differences between ABC's contract and the NCAA plan that was the subject of the earlier litigation and the important changes in the market since the NCAA trial in 1982.

2. Effects of Time-Period Restrictions

In its submissions in this proceeding, INTV has argued that time period restrictions in ABC's contracts have in some instances prevented local stations from televising certain games that they would like to televise or at times that they would pre-

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fer and that viewers have therefore been disadvantaged by the restrictions. The record does not support this argument.

In the first place, it is not clear that ABC's contracts have actually prevented any, or any material number of, local telecasts that would otherwise have occurred. ABC's agreements do not prohibit local telecasts. To the contrary, they permit live, over-the-air telecasts anywhere in the country on Saturday afternoons of every game not televised by ABC. And the contract limits on the number of times individual schools may be televised by ABC ensure that there remains an ample inventory of attractive games for other telecasters.

INTV's effort to show that time-period restrictions reduce viewership is based on anecdotes from a handful of local communities. INTV does not purport to measure the overall impact of ABC's contracts throughout the country, and it is implausible that the contracts disserve viewers overall. As ABC explained in its April 11, 1994 Comments, the contracts are intended to generate value for advertisers by enabling ABC to deliver the largest possible audiences. Advertisers prefer large audiences to small audiences, and they thus pay more per viewer as the size of the audience increases. This is shown by Exhibit 2, which is a chart that depicts the relationship between ratings of ABC sports telecasts and the advertising prices for those telecasts.^{1/} Since advertisers want to reach the largest possible audiences, one would expect that industry arrangements that benefit advertisers would, overall, generate the largest audiences.

Moreover, INTV ignores the effect that doing away with time period restrictions would have on national telecasters -- and thus on the multitude of areas in which there is no substantial desire for more telecasts of local games. Time period restrictions are needed to generate large enough audiences to justify the investment in the telecasts by advertisers and telecasters. Without time period restrictions, it is likely that there would be fewer national telecasts. ESPN's recent experience with Major League Baseball ("MLB") demonstrates this point: ESPN stopped televising MLB games on Mondays, Tuesdays and

^{1/} The chart was prepared in 1990 and is based upon data for the period 1982-89. Although we have not studied these data since, we have no reason to believe that the relationship described in Exhibit 2 is any less true today than it was during that period. The specific pricing information on which the chart is based is confidential and has accordingly been deleted from the Exhibit.

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Fridays because it did not have exclusive television rights, and thus could not generate audiences big enough for advertisers, on those nights.

In addition, INTV ignores the ways in which time period exclusivity benefits viewers directly by creating incentives for telecasters to show games at different times, instead of having two or more telecasters offer games at the same time. A simple example will illustrate the point. If two telecasters are permitted to televise football in the desirable 3:30 to 7:00 p.m. window on Saturdays, the games might get ratings of 7.5 and 7.0, for a total of 14.5 rating points. If, on the other hand, there were time period restrictions, one telecaster might televise a game during that 3:30 to 7:00 p.m., window with a rating of 9, and the other telecaster might televise a game during the earlier 12:00 to 3:30 p.m. window, with a rating of 6; in that event, even though one of the telecasters would be disadvantaged, the two telecasts together would account in total for 15 rating points, and viewers as a whole would be better off.

Something like that happened on a larger scale in 1989 when ABC acquired rights to televise games of both the CFA, which had previously been televised by CBS, and the PAC 10/Big 10.^{2/} While ABC's success had the effect of excluding CBS from televising college football games, it also (i) increased the inventory of games from which ABC could select and thus enhanced ABC's ability to offer viewers throughout the country a schedule of attractive games and (ii) increased incentives for network telecasts in both the early and late afternoon windows. The result was an expected increase in both the total number of games shown on network television and the total audience for network telecasts, as compared to the prior arrangement in which CBS televised the CFA games and ABC televised the PAC 10/Big 10 games.

Finally, INTV's argument overlooks the fact that time period exclusivity increases television diversity because other telecasters provide non-football programming during the restricted time periods. In that way, too, time period exclusivity benefits television viewers.

^{2/} Notre Dame subsequently chose not to participate in the ABC/CFA arrangement and entered into a separate agreement with NBC.

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3. Major League Baseball on Sunday Nights

As ESPN explained in its Reply Comments of April 26, 1994, its current contract with MLB does not give ESPN exclusive rights to televise games on Sunday nights. The arrangements for Sunday night telecasts are intended, instead, to create a new product for television viewers and baseball fans. MLB has agreed to schedule games for ESPN to televise on Sunday evenings, when games are otherwise rarely played. The arrangement contemplates a tour of the stadiums of the various MLB teams and provides that ESPN may televise no more than one home game and two away games of any team. The contract thus benefits viewers both by insuring that there will be telecasts on Sunday nights, when teams rarely schedule games, and by enabling viewers throughout the nation to see most or all of MLB's teams and stadiums.

If there are any questions in connection with the foregoing, please contact me.

Sincerely,



Charlene Vanlier

Enclosures

cc: Jonathan Levy, Esq.
Kathleen Franco, Esq.
Jim Olson, Esq.
Marty Stern, Esq.

Summary of Certain Provisions in ABC's College Football Agreements

<u>Years</u>	<u>Rights Holder or Association</u>	<u>No. of Telecasts Per Year</u>	<u>No. of Games Per Year</u>	<u>Selection Time</u>	<u>Restrictions on Telecasts of Crossover Games</u>	<u>Time-Period Exclusivity</u>	<u>Appearance Restrictions (games/year)</u>
1985-86	CFA	15	23	12 days in advance (6 days on 3 dates)	none	No other telecasts from 3:30- 7:00 when ABC telecasts	Max. 3/school (4 for each of 2 schools)
1987-90	PAC 10/ Big 10	15	20	12 days in advance (6 days on 3 dates)	none	No other telecasts during 3½ hour ABC window except for 45 minute overlap at beginning and end	Max. 4/school (5 each for 2 schools)
1990-96	PAC 10/ Big 10	15	23	12 days in advance (6 days on 3 dates)	none	No other telecasts during 3½ hour ABC window except for 45 minute overlap at beginning and end	Max. 5/school (6 each for 2 schools)
1991-95	CFA	16-20	25-35	12 days in advance (6 days on 3 dates)	none	Other tele- casts OK (i) if games begin by 12:10 p.m. or after 7:00 p.m. local time or (ii) in ADI's of the participating schools	Max. 3/school (4 for 1 school)

AVERAGE PRICE VS. RATINGS **ABC SPORTS BROADCASTING** **1982-1989**

